

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDWARD GREEN,	:
	:
Petitioner,	: DECLARATION IN
	: OPPOSITION TO THE
-against-	: PETITION FOR A WRIT
	: OF HABEAS CORPUS
THE STATE OF NEW YORK,	:
	:
Respondent.	:
-----	x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

THOMAS B. LITSKY, an attorney admitted to practice in the State of New York, and before this Court, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

1. I am an Assistant Attorney General, of counsel to Eric T. Schneiderman, the Attorney General of the State of New York. I submit this declaration and the accompanying memorandum of law in opposition to the petition for

2. Edward Green ("petitioner") brings this habeas corpus application pursuant to 28 U.S.C. § 2254 alleging that he is being held in state custody in violation of his federal constitutional rights. Petitioner's state custody arises from a judgment of conviction entered on October 8, 2008, in the New York State Supreme Court, New York County. By that judgment petitioner was convicted, after a jury trial, of Criminal Possession

of a Controlled Substance in the First Degree (N.Y. Penal Law ("Penal Law") § 220.21[1]), Criminal Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16[1]), and two counts of Criminally Using Drug Paraphernalia in the Second Degree (Penal Law §§ 220.50[2], [3]). The court sentenced petitioner, as a second felony drug offender, to an aggregate prison term of 15 years, to be followed by 5 years of post-release supervision.¹ On March 24, 2011, the Appellate Division, First Department, affirmed petitioner's conviction. *People v. Green*, 82 A.D.3d 593 (1st Dep't 2011). On August 25, 2011, the New York Court of Appeals denied petitioner leave to appeal. *People v. Green*, 17 N.Y.3d 816 (2011). Petitioner is incarcerated pursuant to this judgment of conviction.

3. Petitioner was prosecuted by the District Attorney of New York County. By agreement with the District Attorney, the Attorney General of the State of New York will represent respondent in this matter.

4. Petitioner appears to assert the following claims in his petition, renumbered here: (1) ineffective assistance of trial counsel; (2) ineffective assistance of appellate counsel; (3) the verdict was against the weight of the

¹ Specifically, petitioner received a 15-year determinate sentence on the first-degree possession count, to be followed by 5 years of post-release supervision. That term was to run concurrently with a 12-year determinate sentence on the third-degree possession count, to be followed by 3 years of post-release supervision. On the misdemeanor counts of criminally using drug paraphernalia, petitioner received two 1-year prison terms, which merged with his felony sentences. See Penal Law § 70.25[2].

evidence; and (4) the two stipulations that substances analyzed by the police chemists contained cocaine should be vacated.

5. As explained in greater detail in respondent's memorandum of law, petitioner's individual ineffective assistance of trial counsel claims are partially unexhausted and lack merit. Petitioner's claims concerning appellate counsel, the stipulations, and the weight of the evidence, are unexhausted and procedurally defaulted. Petitioner's weight of the evidence claim is also not cognizable. Accordingly, the Court should dismiss the petition, and issue no certificate of appealability.

6. Respondent is filing a separate state court record. The trial and sentencing transcripts have been provided to the Clerk of the Court.

WHEREFORE, and for the reasons set forth in the accompanying memorandum of law, the Court should dismiss the petition for a writ of habeas corpus, and issue no certificate of appealability.

Dated: December 19, 2014
New York, New York

/s Thomas B. Litsky
By: _____
THOMAS B. LITSKY (TL-8976)
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TO: Clerk of the Court
United States District Court
for the Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Edward Green
08-A-5510
Eastern New York Correctional Facility
P.O. Box 338
Napanoch, NY 12458

DECLARATION OF SERVICE

THOMAS B. LITSKY, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows: that on December 19, 2014, he served respondent's declaration in opposition to the petition, memorandum of law, and any unpublished cases cited therein, and the bound state court record, by mailing a copies to petitioner at the following address:

Edward Green
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Eastern New York Correctional Facility
P.O. Box 338
Napanoch, NY 12458

Executed on December 19, 2014

/s/ Thomas B. Litsky

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